

MILES EHRLICH (Bar No. 237954)
miles@ramsey-ehrllich.com
ISMAIL RAMSEY (Bar No. 189820)
izzy@ramsey-ehrllich.com
AMY CRAIG (Bar No. 269339)
amy@ramsey-ehrllich.com
RAMSEY & EHRLICH LLP
803 Hearst Avenue
Berkeley, CA 94710
(510) 548-3600 (Tel)
(510) 291-3060 (Fax)

Attorneys for Non-Party Anthony Levandowski

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

WAYMO LLC,

Plaintiff,

v.

UBER TECHNOLOGIES, INC., *et al.*,

Defendants.

) Case No.: 3:17-cv-00939-WHA
)
)

) **NON-PARTY ANTHONY**
) **LEVANDOWSKI'S NOTICE OF**
) **MOTION AND MOTION FOR**
) **INTERVENTION UNDER RULE 24(b);**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES; [PROPOSED] ORDER**

) Date: June 8, 2017
) Time: 10:00 a.m.
) Courtroom: F, 15th Floor
) Judge: The Hon. Jacqueline Scott Corley
)

Trial Date: October 2, 2017

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 8, 2017, at 10:00 a.m., in the courtroom of the Honorable Jacqueline Scott Corley, San Francisco Courthouse, Courtroom F, 15th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, non-party Anthony Levandowski will and hereby does bring a motion for permissive intervention under Federal Rule of Civil Procedure

24(b) in the above-entitled matter for the limited purpose of opposing Waymo's motion to compel material subject to a joint defense agreement to which Mr. Levandowski is a party.

This motion is based on this notice of motion and motion, the below memorandum of points and authorities, the pleadings, files and records in this case, as well as other written or oral argument which may be presented at the hearing.

Date: May 8, 2017

Respectfully submitted,

/s/

Miles Ehrlich

Ismail Ramsey

Amy Craig

Ramsey & Ehrlich

Counsel for Non-Party Anthony

Levandowski

MEMORANDUM OF POINTS AND AUTHORITIES

On April 25, 2017, this Court set deadlines for Waymo to bring a motion to compel production of a due diligence report that Mr. Levandowski and the defendants assert is protected by attorney-client, attorney work product, and common interest privileges. Docket No. 271. The Court's order required Waymo to file its motion to compel production of the report by May 1, and for the defendants and Mr. Levandowski to file their opposition briefs by May 8, 2017 at noon. *Id.*

By the present motion, Mr. Levandowski, a non-party, officially requests that this Court grant him permissive intervention under Rule 24(b) to fully litigate his opposition to Waymo's motion to compel and to join Uber and Ottomotto LLC's separately-filed opposition to that same motion. This Court previously granted Mr. Levandowski's motion to intervene to litigate his Fifth Amendment privilege, but emphasized that the intervention was "solely for purposes" of Mr. Levandowski's Motion to Modify the Court's Expedited Discovery Order. Docket No. 169 at 4:10-13. The Court's scheduling order with respect to Waymo's pending Motion to Compel expressly contemplates Mr. Levandowski filing an opposition to Waymo's motion. Docket No. 271 at 1:26-27 ("Defendants *and Levandowski* shall have until May 8 at noon to oppose . . .") (emphasis added). In keeping with the Court's order, we ask the Court to again grant Mr. Levandowski permissive intervention for the limited purpose of opposing Waymo's discovery motion filed on May 1, 2017 (Docket No. 321).

Under Rule 24(b), the district court has the discretion to grant permissive intervention where the intervenor's "claim . . . and the main action have a question of law or fact in common." *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1108 (9th Cir. 2002). The rule is liberal: "If there is a common question of law or fact, the requirement of the rule has been satisfied and it is then discretionary with the court whether to allow intervention." *Id.* at 1109, quoting 7C Wright, Miller & Kane, Federal Practice and Procedure § 1911, 357-63 (2d ed. 1986). As such, courts will grant permissive intervention where a non-party seeks to oppose production of materials subject to a claim of privilege. *See, e.g., Convertino v. United States*

1 *DOJ*, 674 F. Supp. 2d 97, 109 (D.D.C. 2009) (“Without the right to intervene in discovery
 2 proceedings, a third party with a claim of privilege in otherwise discoverable materials could
 3 suffer ‘the obvious injustice of having his claim erased or impaired by the court’s adjudication
 4 without ever being heard.’”). Further, the grant of permissive intervention will protect Mr.
 5 Levendowski’s right to appeal orders of this Court: “An intervenor may appeal from ‘all
 6 interlocutory and final orders that affect him . . . whether the right under which he intervened
 7 was originally absolute or discretionary.’” *Stringfellow v. Concerned Neighbors in Action*, 480
 8 U.S. 370, 376 (1987) *quoting* Moore & J. Kennedy, *Moore's Federal Practice* para. 24-15, pp.
 9 24-169-24-170 (2d ed. 1985).

10 Because Mr. Levandowski seeks to oppose Waymo’s motion seeking compelled
 11 production of materials subject to a joint defense agreement to which Mr. Levandowski is a
 12 party, this Court should grant the present motion for permissive intervention. A grant of
 13 permissive intervention will allow Mr. Levandowski to fully litigate the issue both in the district
 14 court and the Ninth Circuit.

15 For the foregoing reasons, the Court should grant the present motion to intervene under
 16 Rule 24(b).

17
 18 Date: May 8, 2017

Respectfully submitted,

19
 20 /s/

21 Miles Ehrlich

22 Ismail Ramsey

23 Amy Craig

Ramsey & Ehrlich LLP

24 *Counsel for Non-Party Anthony*
 25 *Levandowski*

[PROPOSED] ORDER

For the reasons stated above, non-party Anthony Levandowski may intervene pursuant to Federal Rule of Civil Procedure 24(b) in order to i) oppose Waymo's Motion to Compel Production of a Due Diligence Report (Docket No. 321), and ii) to join in Uber Technologies, Inc. and Ottomotto LLC's Opposition to Waymo's Motion (Docket No. 369).

DATE: _____

JACQUELINE SCOTT CORLEY
UNITED STATES MAGISTRATE JUDGE